

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MB Docket No. 05-107
FM Broadcast Stations.)	RM-11199
(Islamorada, Marathon and Sugarloaf Key,)	
Florida))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: July 13, 2005

Released: July 15, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making*¹ issued at the request of LSM Radio Partners LLC ("Petitioner"), licensee of Station WWWW(FM), Channel 288C2, Marathon, Florida. Petitioner filed comments. No other comments or counterproposals were received in this proceeding.

2. **Background.** The *Notice* proposed the allotment of Channel 289A at Sugarloaf Key, Florida, as its first local service. To accommodate the proposed Sugarloaf Key allotment, the *Notice* also requested the reallocation of Channel 288C2 from Marathon to Islamorada, Florida, as its second local service and modification of the Station WWWW(FM) license accordingly. Petitioner filed comments reaffirming its interest in the proposed Channel 289A at Sugarloaf Key and the reallocation of Station WWWW(FM) to Islamorada.

3. **Discussion.** We find that the public interest would be served by allotting Channel 289A at Sugarloaf Key, Florida, as its first local service. We conclude that Sugarloaf Key is a community for FM allotment purposes.² Channel 289A can be allotted to Sugarloaf Key in conformity with the Commission's rules, provided there is a site restriction of 3.6 kilometers (2.2 miles) southwest at coordinates 24-37-30 NL and 81-32-30 WL. Moreover, to accommodate this allotment, we will reallocate Channel 288C2 from Marathon to Islamorada, Florida, as its second local service and modify the Station WWWW license accordingly. Channel 288C2 can be reallocated to Islamorada, consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's rules, provided there is a site restriction of 15.5 kilometers (9.6 miles) northeast at coordinates 25-01-23 NL and 80-30-06 WL.

4. Petitioner filed its reallocation proposal pursuant to § 1.420(i) of the Commission's rules, which permits the modification of a station's license to specify a new community of license without affording

¹ See *Islamorada, Marathon and Sugarloaf Key, Florida*, 20 FCC Rcd 6038 (MB 2005) ("Notice").

² As stated in the *Notice*, Sugarloaf Key has a population of 1,528 persons. Sugarloaf Key has its own zip code, public school, "Sugarloaf Elementary/Middle School", church, bank, volunteer fire department and airport, restaurant and commercial businesses. Sugarloaf Key also has several restaurants and businesses that identify themselves with Sugarloaf Key, such as Sugarloaf Lodge Restaurant, Sugarloaf Sports & Leisure Club, Sugarloaf Resort-KOA and Sugarloaf Marina.

other interested parties an opportunity to file competing expressions of interest in the proposed allotment.³ As required by *Community of License*, the proposed reallocation of Channel 288C2 at Islamorada is mutually exclusive with the current authorized facilities of Station WWWW(FM), Channel 288C2, Marathon, Florida.

4. When considering a reallocation proposal, a comparison is first made between the existing allotment and the proposed allotment to determine whether the reallocation would result in a preferential arrangement of allotments based upon the FM Allotment priorities.⁴ In this instance, the Channel 288C2 reallocation at Islamorada would allow first local service at Sugarloaf Key, priority (3) and provide a first competitive transmission service at Islamorada,⁵ whereas the retention of Station WWWW(FM) at Marathon would attribute to a fourth local service, priority (4).⁶

5. The reallocation of Channel 288C2 to Islamorada would result in a gain of service to 55,590 persons, while resulting in a loss of service to 21,426 persons. The loss area is considered well-served because it would continue to receive at least five aural transmission services. A *Tuck* analysis is not required because Islamorada is not located within an urbanized area nor would the signal of Station WWWW(FM) cover any part of an urbanized area within its 70 dBu contour.

6. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

7. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective August 29, 2005, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Communities</u>	<u>Channel No.</u>
Islamorada, Florida	283C2, 288C2
Marathon, Florida	232C2, 249A
Sugarloaf Key, Florida	289A

9. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a) that the authorization of LSM Radio Partners LLC for Station WWWW(FM), Channel 288C2, Marathon, Florida, IS MODIFIED to specify operation on Channel 288C2 at Islamorada, Florida, subject to the following conditions:

- (a) Within 90 days of the effective date of the *Order*, the licensee of Station WWWW(FM) shall submit to the Commission a minor change

³ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7394 (1990) ("*Community of License*").

⁴ The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)], *See Revision of FM Assignment Policies and Procedures*, 90 FCC Rcd 88, 91 (1988).

⁵ Channel 283C2 was recently allotted to Islamorada. *See Islamorada, Florida*, 19 FCC Rcd 22647 (2004).

⁶ AM Station WFFG and FM Stations WGMX and WAVK are currently licensed to Marathon.

application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F.R. Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to 47 C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

10. Pursuant to 47 C.F.R. Sections 1.1104(1)(k) and (3)(l) of the Commission's rules, LSM Radio Partners LLC, licensee of Station WWWK(FM), Channel 288C2, Marathon, Florida, is required to submit a rulemaking fee in addition to the fee required for the application to effectuate the community of license for Station WWWK(FM) to specify operation on Channel 288C2 at Islamorada at the time its Form 301 application is submitted.

11. IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED.

12. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau